



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200441033

Date: JUL 12 2004

U.I.L. Nos.
4941.00-00
4941.04-00

T:ED: B2

Employer Identification Number:

LEGEND:

W =
X =
Y =

Dear Sir or Madam:

This is in response to W's request dated June 18, 2003, for a ruling under section 53.4941(d)-2(f)(2) of the Income Tax Regulations, submitted by W's legal representative.

W has been recognized as exempt under section 501(c)(3) of the Internal Revenue Code and classified as a private foundation described in section 509(a) of the Code. W states that its primary exempt purpose is funding and conducting scientific research. W communicates information to the public in an educational format.

W's offices are located in a building on a business campus owned by X, with X being a company controlled by disqualified persons of W. In addition to leasing space to W under a rent-free lease agreement, X rents other buildings in the facility to for-profit and not-for-profit entities that primarily conduct scientific research.

The facility currently bears the name of an independent contract research organization that no longer resides there. X wishes to rename the facility Y, which will incorporate part of W's name. X states that this is being done so as to reduce the confusion in the community regarding the location and use of the facilities.

W owns the rights to its name and it has copyrighted a logo using the name. X will enter into a License Agreement ("Use of Name Agreement") with W that restricts Y's use of the name and logo solely to (1) identifying the property and conference facilities located on the property in signage, addresses and advertising, and (2) identifying events that occur on the property. The name and logo are to be used only by X in connection with the property and not for identifying other properties or businesses located elsewhere. The agreement further provides that X will

only use the name and logo in a method, form, and manner as may be directed by W from time to time. X is to permit W to inspect X's use of the name and logo at any time. W may terminate the license without cause upon 30 days' notice.

X is not located within or adjacent to the facilities discussed in this ruling. W represents that X will not capitalize on the use of W's name for advertising, sales or promotional purposes. W further represents that it will not indemnify X or its affiliated companies for the use of W's name. In addition, W represents that signage for the business campus will have no reference to X or its affiliated companies. Finally, W represents that X will cease using W's name for its business campus if and when W moves or relocates from the campus.

W has requested the following ruling:

The use of W's name on a business scientific research campus owned by a disqualified person where W occupies a building under a rent-free lease agreement constitutes a benefit that is so incidental or tenuous to the disqualified person so as to not be an act of self-dealing within the meaning of section 53.4941(d)-2(f)(2) of the regulations.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated for religious, charitable, or educational purposes.

Section 4941 of the Code provides for the imposition of tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(e) of the Code describes "self dealing" as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 1.501(c)(3)-1(d)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests

Section 53.4941(d)-1(b) of the regulations provides that the leasing of property by a disqualified person to a private foundation shall not be an act of self-dealing if the lease is without charge.

Section 53.4941(d)-1(f)(2) of the regulations provides that fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous.

In Example 4 of section 53.4941-1(f)(9) of the regulations, a disqualified person with respect to private foundation contributed certain real estate to the private foundation for the purpose of building a neighborhood recreation center in a particular underprivileged area. As a condition of the gift, the private foundation agreed to name the recreation center after the disqualified person. Since the benefit to the disqualified person was only incidental and tenuous, the naming of the recreation center, by itself, was not be an act of self-dealing.

Rev. Rul. 77-331, 1977-2 C.B. 388, states that an incidental or tenuous benefit occurs when the general reputation or prestige of disqualified person is enhanced by public acknowledgement of some specific donation by such person, when a disqualified person receives some other relatively minor benefit of an indirect nature, or when such a person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest to the community.

Rev. Rul. 77-367, 1977-2 C.B. 193, describes an organization that was found to be exempt where a corporation which donated the land and a substantial percentage of the organization's support benefited by having the village named after it and by having its name associated with the village through both the corporation's and the organization's advertising. The revenue ruling reasoned that while the corporation benefited by having the village named after it, by having its name associated with the village in conjunction with its own advertising program, and by having its name mentioned in each publication of the organization that it finances, such benefits are merely incidental to the benefits flowing to the general public from the charitable purposes being served by the organization.

X benefits from the licensing agreement by which it associates itself with W. While generally the use of W's assets by X as a controlled entity of a disqualified person would be an act of self dealing under section 4941 of the Code, here the benefit derived by X is a tenuous or incidental one within the meaning of section 53.4941-1(f)(2) of the regulations. See, Rev. Rul. 77-331, supra; Rev. Rul. 77-367, supra. Therefore, X's use of W's name in accordance with the terms of the licensing agreement in and of itself does not result in self-dealing.

Accordingly, based on all the facts and circumstances described above, we rule as follows:

The use of W's name on a business scientific research campus owned by a disqualified person where W occupies a building under a rent-free lease agreement constitutes a benefit that is so incidental or tenuous to the disqualified person so as to not be an act of self-dealing within the meaning of section 53.4941(d)-2(f)(2) of the regulations.

This ruling applies the applicability of section 4941 to the facts represented above. We express no opinion as to the tax consequences of the transaction under any other provisions of the Code.

This ruling is directed only to W. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

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If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Joseph Chasin
Manager, Exempt Organizations
Technical Group 2